

## Message Text

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ORIGIN OPIC-12

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DRAFTED BY OPIC/D:EABURTON

APPROVED BY EB/IFD/OIA MKENNEDY

OPIC/D:RPOATS

OPIC/INS:AKRAMISH (SUBS)

EB/IFD/OIA WHCOURTNEY

NEA/PAB:LBLESSER

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FM SECSTATE WASHDC

TO AMEMBASSY DACCA PRIORITY

UNCLAS STATE 237418

E.O. 11652:N/A

TAGS: EFIN:BG

SUBJECT: OPIC INVESTMENT INCENTIVE AGREEMENT

REF DACCA 5209

FOLLOWING IS TEXT OF OPIC INVESTMENT INCENTIVE AGREEMENT

EXCELLENCY:

I HAVE THE HONOR TO REFER TO CONVERSATIONS WHICH HAVE RECENTLY TAKEN PLACE BETWEEN REPRESENTATIVES OF OUR TWO GOVERNMENTS RELATING TO INVESTMENTS IN BANGLADESH WHICH PROMOTE THE DEVELOPMENT OF THE CONOMIC RESOURCES AND PRODUCTIVE CAPACITIES OF BANGLADESH AND TO INSURANCE AND GUARANTIES OF SUCH INVESTMENTS ISSUED AS AN INCENTIVE BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA. I ALSO HAVE THE HONOR TO CONFIRM THE FOLLOWING UNDERSTANDINGS REACHED AS RESULT OF THOSE CONVERSATIONS:

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1. WHEN AN INVESTOR PROPOSES TO INVEST IN A PROJECT OR ACTIVITY WITHIN BANGLADESH, WITH THE ASSISTANCE OF INSURANCE OR GUARANTIES (HEREINAFTER REFERRED TO AS "COVERAGE") ISSUED PURSUANT TO THIS AGREEMENT BY THE

GOVERNMENT OF THE UNITED STATES OF AMERICA, THE GOVERNMENT  
OF THE UNITED STATES OF AMERICA (THE ISSUING GOVERNMENT)  
AND THE GOVERNMENT OF BANGLADESH (THE HOST GOVERNMENT)  
SHALL, UPON THE REQUEST OF EITHER, CONSULT RESPECTING THE  
NATURE OF THE PROJECT OR ACTIVITY.

2. THE PROCEDURES SET FORTH IN THIS AGREEMENT SHALL APPLY  
WITH RESPECT TO COVERAGE OF INVESTMENTS IN PROJECTS OR  
ACTIVITIES HEREAFTER APPROVED BY THE HOST GOVERNMENT  
AND OF INVESTMENTS IN BANGLADESH FOR WHICH COVERAGE HAS  
HERETOFORE BEEN ISSUED BY THE ISSUING GOVERNMENT PURSUANT  
TO PERTINENT INTERGOVERNMENTAL AGREEMENTS THEN IN FORCE.

3. IF THE ISSUING GOVERNMENT MAKES PAYMENT TO ANY INVESTOR  
UNDER COVERAGE REFERRED TO IN PARAGRAPH 2 OF THIS  
AGREEMENT, THE HOST GOVERNMENT SHALL, SUBJECT TO THE  
PROVISIONS OF PARAGRAPH 4, RECOGNIZE THE TRANSFER TO THE  
ISSUING GOVERNMENT OF ANY CURRENCY, CREDITS, ASSETS,  
OR INVESTMENT ON ACCOUNT OF WHICH PAYMENT UNDER SUCH  
COVERAGE IS MADE AS WELL AS THE SUCCESSION OF THE ISSUING  
GOVERNMENT TO ANY RIGHT, TITLE, CLAIM, PRIVILEGE,  
OR CAUSE OF ACTION EXISTING, OR WHICH MAY ARISE, IN  
CONNECTION THEREWITH. THE ISSUING GOVERNMENT SHALL ASSERT  
NO GREATER RIGHTS THAN THOSE OF THE TRANSFERRING INVESTOR  
WITH RESPECT TO ANY INTERESTS TRANSFERRED OR SUCCEEDED TO  
UNDER THIS PARAGRAPH. THE ISSUING GOVERNMENT DOES, HOWEVER,  
RESERVE ITS RIGHTS TO ASSERT A CLAIM IN ITS SOVEREIGN  
CAPACITY UNDER INTERNATIONAL LAW.

4. TO THE EXTENT THAT THE LAWS OF THE HOST GOVERNMENT  
PARTIALLY OR WHOLLY INVALIDATE OR PROHIBIT THE ACQUISITION  
FROM A COVERED INVESTOR OF ANY INTERESTS IN ANY PROPERTY  
WITHIN ITS TERRITORY BY THE ISSUING GOVERNMENT, THE HOST  
GOVERNMENT SHALL PERMIT SUCH INVESTOR AND THE ISSUING  
GOVERNMENT TO MAKE APPROPRIATE ARRANGEMENTS PURSUANT TO  
WHICH SUCH INTERESTS ARE TRANSFERRED TO AN ENTITY  
PERMITTED TO OWN SUCH INTERESTS UNDER THE LAWS OF THE  
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HOST GOVERNMENT.

5. AMOUNTS IN THE LAWFUL CURRENCY OF THE HOST GOVERNMENT  
AND CREDITS THEREOF ACQUIRED BY THE ISSUING GOVERNMENT UNDER  
COVERAGE REFERRED TO IN PARAGRAPH 2 OF THIS AGREEMENT SHALL  
BE ACCORDED TREATMENT NO LESS FAVORABLE THAN THAT  
ACCORDED TO FUNDS OF NATIONALS OF THE UNITED STATES OF AMERICA  
DERIVING FROM INVESTMENT ACTIVITIES LIKE THOSE IN WHICH  
THE INVESTOR HAS BEEN ENGAGED, AND SUCH AMOUNTS  
AND CREDITS SHALL BE FREELY AVAILABLE TO THE ISSUING  
GOVERNMENT FOR ITS USE IN THE TERRITORY OF THE HOST  
GOVERNMENT.

6. (A) DIFFERENCES BETWEEN THE TWO GOVERNMENTS  
CONCERNING THE INTERPRETATION OF THE PROVISIONS OF THIS  
AGREEMENT SHALL BE RESOLVED, IN SO FAR AS POSSIBLE, THROUGH  
NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS. IF SUCH A  
DIFFERENCE CANNOT BE RESOLVED WITHIN A PERIOD OF THREE  
MONTHS FOLLOWING THE REQUEST FOR SUCH NEGOTIATIONS,  
IT SHALL BE SUBMITTED, AT THE REQUEST OF EITHER GOVERNMENT,  
TO AN ARBITRAL TRIBUNAL FOR RESOLUTION IN ACCORDANCE WITH  
PARAGRAPH 6(C).

(B) ANY CLAIM, ARISING OUT OF ANY INVESTMENT REFERRED TO IN  
PARAGRAPH 2 OF THIS AGREEMENT, AGAINST EITHER OF THE  
TWO GOVERNMENTS, WHICH, IN THE OPINION OF THE OTHER, PRESENTS  
A QUESTION OF PUBLIC INTERNATIONAL LAW SHALL, AT THE REQUEST  
OF THE GOVERNMENT PRESENTING THE CLAIM, BE SUBMITTED TO  
NEGOTIATIONS. IF AT THE END OF THREE MONTHS FOLLOWING  
THE REQUEST FOR NEGOTIATIONS THE TWO GOVERNMENTS HAVE NOT  
RESOLVED THE CLAIM BY MUTUAL AGREEMENT, THE CLAIM,  
INCLUDING THE QUESTION OF WHETHER IT PRESENTS A QUESTION  
OF PUBLIC INTERNATIONAL LAW, SHALL BE SUBMITTED, AT THE  
REQUEST OF EITHER GOVERNMENT, TO AN ARBITRAL TRIBUNAL  
FOR RESOLUTION IN ACCORDANCE WITH PARAGRAPH 6(C).

(C) THE ARBITRAL TRIBUNAL FOR RESOLUTION OF DISPUTES PURSUANT  
TO PARAGRAPHS 6(A) AND 6(B) SHALL BE ESTABLISHED AND FUNCTION  
AS FOLLOWS:

(I) EACH GOVERNMENT SHALL APPOINT ONE ARBITRATOR; THESE  
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TWO ARBITRATORS SHALL DESIGNATE A PRESIDENT BY COMMON  
AGREEMENT WHO SHALL BE A CITIZEN OF A THIRD STATE AND BE  
APPOINTED BY THE TWO GOVERNMENTS. THE ARBITRATORS SHALL BE  
APPOINTED WITHIN TWO MONTHS AND THE PRESIDENT WITHIN THREE  
MONTHS OF THE DATE OF RECEIPT OF EITHER GOVERNMENT'S REQUEST  
FOR ARBITRATION. IF THE APPOINTMENTS ARE NOT MADE WITHIN THE  
FOREGOING TIME LIMITS, EITHER GOVERNMENT MAY, IN THE ABSENCE  
OF ANY OTHER AGREEMENT, REQUEST THE PRESIDENT OF THE  
INTERNATIONAL COURT OF JUSTICE TO MAKE THE NECESSARY APPOINT-  
MENT OR APPOINTMENTS, AND BOTH GOVERNMENTS AGREE TO ACCEPT  
SUCH APPOINTMENT OR APPOINTMENTS.

(II) THE ARBITRAL TRIBUNAL SHALL BASE ITS DECISION ON  
THE APPLICABLE PRINCIPLES AND RULES OF PUBLIC INTERNATIONAL  
LAW. THE ARBITRAL TRIBUNAL SHALL DECIDE BY MAJORITY  
VOTE. ITS DECISION SHALL BE FINAL AND BINDING. ONLY THE  
TWO GOVERNMENTS MAY REQUEST THE ARBITRAL PROCEDURE AND  
PARTICIPATE IN IT.

(III) EACH OF THE GOVERNMENTS SHALL PAY THE EXPENSE  
OF ITS ARBITRATOR AND OF ITS REPRESENTATION IN THE PROCEEDINGS  
BEFORE THE ARBITRAL TRIBUNAL; THE EXPENSE OF THE

PRESIDENT AND THE OTHER COSTS SHALL BE PAID IN EQUAL PARTS BY THE TWO GOVERNMENTS. THE ARBITRAL TRIBUNAL MAY ADPT REGULATIONS CONCERNING THE COSTS, CONSISTENT WITH THE FOREGOING.

(IV) IN ALL OTHER MATTERS, THE ARBITRAL TRIBUNAL SHALL REGULATE ITS OWN PROCEDURES.

7. THIS AGREEMENT SHALL CONTINUE IN FORCE UNTIL SIX MONTHS FROM THE DATE OF RECEIPT OF A NOTE BY WHICH ONE GOVERNMENT INFORMS THE OTHER OF AN INTENT NO LONGER TO BE A PARTY TO THE AGREEMENT. IN SUCH EVENT, THE PROVISIONS OF THE AGREEMENT WITH RESPECT TO COVERAGE REFERRED TO IN PARAGRAPH 2 WHICH IS ISSUED BEFORE TERMINATION OF THE AGREEMENT SHALL REMAIN IN FORCE FOR THE DURATION OF SUCH COVERAGE, BUT IN NO CASE LONGER THAN TWENTY YEARS AFTER THE DENUNCIATION OF THE AGREEMENT.

8. THIS AGREEMENT SHALL ENTER INTO FORCE ON THE DATE OF THE UNCLASSIFIED

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NOTE BY WHICH THE HOST GOVERNMENT COMMUNICATES TO THE ISSUING GOVERNMENT THAT THE AGREEMENT HAS BEEN APPROVED IN CONFORMITY WITH THE HOST GOVERNMENT'S CONSTITUTIONAL PROCEDURES.

UPON RECEIPT OF A NOTE FROM YOUR EXCELLENCY INDICATING THAT THE FOREGOING PROVISIONS ARE ACCEPTABLE TO THE GOVERNMENT OF BANGLADESH, THE GOVERNMENT OF THE UNITED STATES OF AMERICA WILL CONSIDER THAT THIS NOTE AND YOUR REPLY THERETO CONSTITUTE AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS ON THIS SUBJECT, THE AGREEMENT TO ENTER INTO FORCE IN ACCORDANCE WITH PARAGRAPH 8.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION.

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